Rejection of the wheat export consignments

DR. NAUNIHAL SINGH (Uttar Pradesh): Madam Vice-Chairman, I wish to bring this to your kind notice and, through you, to the notice of this august House. It is very shocking affair that recently the Government of Indian exported wheat to four countries, Columbia, Morocco, Turkey, Columbia and Poland through private exporters. The wheat stocks were purchased by the exporters from the Food Corporation of India. The stocks which were mainly from the States of Punjab, Haryana and western Uttar Pradesh, were infested with the Kamal Bunt fungus. This fungus was first discovered in India in the year 1931. Due to the Kamal Bunt infection which was detected by the importing countries, all the shipments have been rejected. This has happened in the past as well as' regards other products. It has happened at a time when we intend to augment our exports from the agricultural sector. It is unfortunate for the nation to have faced such a predicament.

Now, the question is how to do the clearance of this shipment which is lying at various sea-ports. The ships are loaded with wheat, and they are lying uncared for at various sear-ports. In this context, the Indian Government should clarify the following points:

One, why were the infected wheat stocks exported to other countries without proper examination and tests? It is very negligent and shameful on the part of the Government.

Two, what measures has the Government taken for clearance of the consignment without any problem *slush* as destruction of wheat at the sea-port on its returning back to India?

My last point is: Is it not true that the prestige of the country is at stake, if the consignmente are rejected in the abseace of clearcut guidelines for export of wheat? The Government should -make. proper arrangements for the future and dearcut guidelines may be given to the exporters and to the FCI that such wheat, which is diseased, in particular with Kar-nal Bunt, is not exported. There is a tremor all over the world about this disease. It has spread also in some foreign countries. So, I want to really warn the Government that we will lose all respect and we wiU lose the share of our rising market in wheat, if that continues to happen. Thank you.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Maulana Habibur Rahman Nomani — hon. Member not present.

Special Mentions are now over. Let us now take up the Statutory Resolution and the Arbitration and Conciliation Bill, 1995. Both of them may be discussed together.

I. STATUTORY RESOLUTION—SEEK ING DISAPPROVAL OF THE ARBIT RATION AND CONCILIATION (THIRD) ORDINANCE, 1996 (NO. 27 OF 1996) PROMULGATED BY THE PRESI DENT ON THE 21ST JUNE, 1996.

II. THE ARBITRATION AND CON-CILIATION BILL, 1996.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Shri Ram Jethmalani Hon. Member absent; Shri Vishnu Kant Shastri hon. Member not present;

Shri Ved Prakas P. Goyal hon. Member not present. Shri Satish Agarwal.

SHRI SATISH AGARWAL (Rajasthan): Thank you, Madam, for giving me this opportunity to move the Resolution. I move:

> That this House disapproves of the Arbitration and Condliation (Third) Orduiance, 1996 (No. 27 of 1996) prnmulgated by the President on the 21st June, 1996.

Madam, I am not opposing the Bill as such. Let me make it very clear at the outset. But 1 am opposing the promulga-

tion of the Ordinance, as I had been doing, so in the past. I and my party have been opposing the governance of the country through ordinances. Nearly eleven ordinances are pending consideration in this House. The tendency not to bring proper legislation before the House and to promulgate ordinances fpr the purpose has been decried by all Members in the House in the past. This particular subject was covered by an ordinance which was issued on 16th January, 19% and which was brought into force and effect from 25th January, 1996 That lapsed. Again another ordinance was promulgated by the President on the 26th day of March, 1996. That also lapsed. Now, this is the third Ordinance making those Ordinances effective from January 1996 i.e. the third ordinance has been promulgated on 21st June, 19%, because the earlier two ordinances could not be converted into Act. The same is the position in regard to other Ordinances also. As such, we have been agitating right from the beginning against governance of this country through Ordinances. I am here to oppose issuance of Ordinances on that ground though we generally support the Bill.

My first objection is to some of the provisions of the Ordinance. In clause 1, you have mentioned that this Ordinance may be called the Arbitration and Conciliation (Third) Ordinance, 1996. It extends to the whole of India provided that Parts I, II and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation. Some explanation follows this. What is Part II? I want to know from the hon. Minister why Part-II has been excluded from being operational in Jammu and Kashmir. Part-II relates to enforcement of certain foreign awards. It has got Giapter-I and Chapter-II. I want to know from the hon. Minister why Part-II has been excluded from being operational in Jammu and Kashmir. What is the special consideration for not making Part-II applicable to Jammu and Kashmir? I fail to understand it because Part-II deals with, as I said, foreign awards. If you are bound by the United Nations Commission on International Trade Law, the rules made thereunder and the UNCIT-RAL Modeal Law, then it is in tune with those provisions that you are bringing forward through this legislation. I, therefore, fail to understand why Part-II has not been extended to Jammu and Kashmir.

My Second objection is with regard to certain provisions in Part-IV. Clause 82 says that the High Court may make rules consistent with this Ordinance as to all proceedings before the Court under this Ordinance. Then clause 83 (1) says and I quote:

> "If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the diffieulty:

Provided that no such order under this section shall be made after the expiry of a period of two years from the date of commencement of this Ordinance." Sub-caluse 2 of clause 83 reads as follows:

> "Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament."

Have you exercised the powers vested in sub-clause (1) of clause 83 during the last six months? If so, have you laid any such orders before each House of Parliament, as required under sub-clause 2 of clause 83? Have any rules been framed by any High, Court, as required under clause 82? If any such thing has hap-p>ened, please let us know because clause 84 says that the Central Government

may, by notification in the Official Gazette, make rules for carrying out the provisions of this Oridinance. Now this Ordinance is a simple paper unless rules are made. And the Government has not made any rules for over six months. Then, what is the fun in issuing the Ordinance? It is just a waste of time. If the rules are framed, they have to be laid on the Table of both the Houses, as required under sub-clause (2) of clause 84 which says that every rule made by the Central Government under this Ordinance shall be laid, as soon as may be, after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session qr the successive sessions aforesaid, etc.Now, I want to 3,00 P.M.

know this From the Government. If you are promulgating three Ordinances one after another, in order to have continuity, then why have you not framed the rules? It is obligatory on the part of the Central Government to frame the rules. It is a mandate given to the Central Government to frame the rules under clause 84 and if you have not framed the rules, how does that particular provision of law work? In clause 85, you have repealed the Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961. As on date, the Arbitration Act, 1940 is governing the procedure for arbitration proceedings in all courts throughout the length and breadth of the country. If you have repealed that by this Ordinance, then, naturally, this Ordinance came into force from 16th January, 1996 whose continuity was maintained by another. Ordinance which was promulgated oh i26th March, 1996 and its continuity was maintained by this Ordinance No. 3 promulgated on 21st June, 1996. When you have repealed these provisions with regard to arbitration, this Arbitration Act, 1940 which was governing the arbitration proceedings in courts of law so far has gone, and there is a vacuum. The old law has been repealed and the new law cannot work and function because there are no rules. I have ascertained from, the Secretariat that rules have not been laid on the Table of the House, that is, rules have not been framed. If the rules have not been framed, how does the law function?

Furthermore, without going much into details, 1 say, Sir, that the primary job of Parliament is to legislate. And legislation is a complex and dry subject. That is why many Members do not take much interest in it. To imbibe a sense of interest is very essential because under our Constitution, it is the rule of law which is dominant in this country. So you have to imbibe and inculcate a sense of interest in legislation. Zero-hour matters and special mentions have got their own importance. I do not deny that. General debates are very much there. But what about legislation? It is criticised sometimes in the Supreme Court and the High Courts that an Act is not a well-drafted law. It is struck down and then you come again before Parliament for validation of that particular provision of law. Things settled become unsettled.

An Ordinance is as good a piece of legislation as an Act passed by Parliament unless, of course, that is rejected by Parliament. I am not seeking actually the rejection of this law because I have made -it clear that we are supporting this Bill. But I am opposing this Ordinance;, on various other grounds. Now, see the Preamble of this particular Ordinance:

> "to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral, awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto."

The Preamble is a long one whereby a mention has been made to the United Nations Commission on International Trade Law which is known as the UNCITRAL Model Law on International Commercial Arbitration which was adopted in 1985. Then, a mention has been made with regard to the General Assembly of the United Nations which has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration jpractice. Now, where are these laws? Where is that Model Law for our guidance? I want to see that Model Law for my guidance and to find out whether this particular piece of legislation is in tune with that Model Law. I am competely in the dark. I do not have that Model Law. I do not have the recommendation of the United Nations Com-niission in International Trade Law.

I don't have. I don't have the rules which were adopted by this particular body in 1980. as you have mentioned in it. I don't have the other rules also which you have mentioned in the Preamble. Unless I have this material with me. how can I effectively participate in the debate, while passing this piece of legislation, which I am supporting? Even while supporting this piece of legislation. I need the material to point it out to you that here are the lacunae and you must plug them right now. Otherwise, they will be challenged in a court of law and all the settled things will become unsettled because the provisions of the Arbitration Act of 1940 had stood the test of time for more than half a century. Now you have repealed that law. You are bringing a new law which is the need of the hour in view of liberalisation, globalisation, the MNCs coming to India, then disputes arising and whether it is Enron. Congen-trix or any other multinational corporation, they want if and they have pressuring India that we must have the Atbitration Law on the lines of the Model Law. So, unless we have sufficient material to be enlightened on the subject, we will not be doing justice to the subject. We are handicapped in that. It is not fair to us. I wish to be fair to the hon. Minister because he is also new to this job.

With these mild remarks, with my observation on the tendency of every Government to rule this country through Ordinances which I have been decrying all throughout, I am opposing this Ordinance on the particular ground. Otherwise, we support the provisions of the Bill. But I seek clarifications from the hon. Minister so far as these points are concerned, more particularly, with regard to the applicability of part 2 of this particular piece of legislation relating to Jammu and Kashmir which does not confer any special status on Jammu and Kashmir. It is not like article 370 regarding which you should be very afraid. These are commercial provisions. The arbitration proceeding have to be there. With these observations. I move my motion and if I am satisfied with the reply of the hon. Minister. I promise him that I will withdraw my motion. Thank you very much.

THE MINISTER OF STATE OF THE DEPTT. OF LEGAL AFFAIRS, LEGISLATIVE DEPTT. AND DEPTT. OF JUSTICE (SHRI RAMAKANT D. KHALAP): Sir, I beg to move:

> "That the Bill to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto, be taken into consideration."

Sir, the need for reform in the law relating to arbitration in India has been widely reconginsed. The Supreme' Court in one of its reported in AIR 1981. Page 2075 Guru Nank Foundation Vs. Wattan Singh judgments dealing .with arbitration

under the Arbitration Act, 1940 stated that the way in which proceedings under the Act were conducted and without exception challenged in courts had made "layers laugh and legal philosophers weep". In a more recent judgment, the Court had observed that the law of arbitration should be made simple, less technical and more responsive to the actual realities of the situations. The Public Accounts Committee had also commented adversely on the working of the Arbitration Act, 1940. The Law commission of India in its 76th Report had suggested a number of amendments to the Arbitration Act, 1940.

The resolution adopted by the Chief Ministers and' the Chief Justices on 4.12.1993 had also stated that courts were not in a position to bear the entire burden of justice system and that a number of disputes lent themselves to resolution by alternative modes such as arbitration, mediation and negotiation. The emphasised the desirability of disputants taking advantage of alternative dispute resolution which provided procedural flexibility, saved valuable time and money and avoided the stress of a conventional trial,

The need for reform in our arbitration law is, therefore, clear and urgent. The question was as to how and on what lines the law should be reformed. There were many models on the subject including the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International. Trade Law (UNCITRAL) and the International. Chamber of Commerce Rules on Conciliation and Arbitration.

0n an examination of available models and suggestions received from various interests and experts, it was felt that there are definite advantages in repealing the Arbitration Act, 1940 and enacting a new law taking into account the UNCITRAL Model Law. The UNCITRAL' Model Law has harmonised the common law and the civil law concepts on arbitration.

There is also an increasing emphasis the world over on conciliation of both international commercial disputes and domestic disputes. The UNCITRAL had adopted a set of Conciliation Rules in 1980, and the General Assembly of the UN had recommended the use of the said rules by its Member States in the context of international commercial relations. Even, in respect of domestic disputes, in many countries, recourse is being taken-to conciliation and other less formal modes of settlement.

We believe that the enactnient of the new law will go a long way in relieving the mounting pressure on the courts as also in providing a speedier and less expensive alternative to litigation. Alternative Dispute Resolution (ADR) system are becoming increasingly popular in other parts of the world. Alternative Dispute Resolution methods like arbitration, conciliation and other forms of non-adversarial methods of dispute resolution can be usefully resorted to in all disputes in respect of which the parties are entitled to conclude a settlement.

The Arbitration and Conciliation Bill. 1995 seeks to consolidate the law relating to arbitration in India presently distributed in three enactments, namely: The Arbitration (Protocol and Convention) act, 1937 which deals with arbitration clauses and execution of certain arbitration awards rendered abroad, the Foreign awards (Recognition and Enforcement) Act, 1961 which provides for ^he recognition and enforcement of foreign arbitral awards and the Arbitration Act, 1940 which deal with the conduct of arbitrations in India and enforcement of arbitral awards given in India. The Bill, while repealing the existing enactments on arbitration, also conolidates and amends the law relating, to domestic arbitration and enforcement of foreign arbitral awards. It also defines the law relating to condljation.

Some of the more important advantages which will flow from the enactment

of the Arbitration and Conciliation Bill, 1995 are:

(a) The new law will be a complete code on the law of arbitration and conciliation in India.

(b) The new law will extend to domestic as well as international arbitration and conciliation and thus avoid a dichotomy within our laws.

(c) The new law iH also apply to any dispute capable of settlement by the parties.

(d) The new law will minimise the role of courts until after an arbitral award is rendered by an arbitral tribunal or the settlement agreement through conciliation is reached by the parties.

(e) The new law will also enable parties to choose arbitral institution to determine certain issues on their behalf.

(f) In respect of international commercial arbitration, parties .will be free to decide on the substantive law applicable to the dispute.

(g) The new law will require the arbitral tribunal to give reasons for its award. This wiU introduce transperancy in decision-making and enhance the faith of the parties in arbitration system.

(h) The arbitral tribunal will be competent to use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement of the dispute.

(i) There will be clear provisions on grant of interest by the arbitral tribunal on the sum adjudged from the date on which such sum becomes due to the date of payment of the amount. This will discourage filing of frivolous objections to the award with a view to delaying its implementation.

(j) The grounds for setting aside an arbitral award will be clear and unambiguous.

(k) When an award is challenged, the court will be competent to give the arbitral tribunal an opportunity to eliminate the grounds for setting aside the award.

(1) There will be no rigid time-limits for making an award. This will help in avoiding most of the present litigation which consists in moving courts for extension of arbitrator's time-limits for making the award resulting in indefinite postponement of arbitral proceedings. Under the new law, the parties will be free to fix the time-limit for making the award and to extend the same either before or after the expiration thereof.

(m) Where the time for making an application to set aside the arbitral award has expired or such application having been made it has been refused, the arbitral award will be enforced in the same manner as if it were a decree of the court. This will eliminate avoidable court proceedings for converting the award into a judgement and decree.

(n) The settlement agreement reached as a result of conciliation proceedings will have the same status and effect as if it were an arbitral award. The Standing Committee on Home Affairs considered the provisions of the Bill in great detail and made suggestions for amendments to some provisions of the Bill. I am deeply indebted to the Chairman and Members o'f the Committee for their very valuable suggestions. I accept them. I shall be moving suitable amendments on the lines of the recommendations made by the Committee as also

certj^iji others of a clarificatory nature at the stage of clause-by-clause consideration of the Bill.

Since the Bill is part of the ongoing economic reforms, since the enactment of the new arbitration law is the basis for the development of Alternative Dispute Resolution systems in India and since there was consensus on the provisions of the proposed legislation, it was felt that the law should be enacted immediately through the promulgation of a Presidential Ordinance. Accordingly, the President was pleased to promulgate the Arbitration and Conciliation Ordinance, 1996 on 16th January, 1996. The Ordinance was brought into force with effect from 25th January, 1996. Explanatory statements giving reasons for immediate legislation by an Ordinance and the reasons for repromulgation of the Ordinance twice, one on 26th March, 1996 and the other on 21st June, 1996 have already been laid on the Table of the House. I will also be moving certain formal and consequential amendments to the Bill pending in the House. I am confident that the House will adopt the amendments and pass the Bill unanimously.

Madam, the points which have been raised by the hon. Member will be answered by me when the other Members also expressed their views and when the debate is completed. Madam, with these words I commend the Bill for consideration.

The questions were proposed.

SHRI GOPALSINH G. SOLANKI (Gujarat): Madam, the present Bill is brought before this august House in consonance with the Ordinance promulgated. A similar Bill .was brought before the House earlier, but it was not considered. Therefore, we find this Bill before the House, When the previous Bill was introduced, it was forwarded to the Standing Committee on Home Affairs where a hearing took place in the presence of the Chairman and the Secretary, Law, and many recommendations, as has been stated by the hon. Minister, were made. But the present Ordinance repeals three particular enactments, namely, the Arbitration Act, 1940. the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Bill is mainly based on United Nations Commission on International Trade Law of which India is a member.

It is nacessary to bring to the notice of the House how this type of Bill has been necessitated. The necessity was felt when different parties had some disputes over some issues regarding their business. These parties were always asked to tell whether they would prefer the decision by the process of judicial law or by arbitration. It had been the practice. That is why arbitration became popular. 1 would also like to submit that this type of practice was popular in Western countries. This practice was popular in the Senate of Rome. All the disputes were .settled through arbitration from 6th century to 4th century B.C. But this practice was meant for limited purposes such as border disputes, territorial questions, damages caused by the invasion of enemies and recovery by one dominant kingdom from another. These disputes were settled through arbitration.

It is also said that the common Law in England was meant to end the object of law. That is why it was considered more severe than the Roman Law. During 19th century the need to settle commerical disputes arose like anything and the House of Lords decided to go in for arbitration.

Then there was some conflict between the Kings and the judiciary. The Kings wanted to establish their supremacy over the judiciary. So far as the status was concerned, the judiciary was belittled. Then arbitration came into force. I am not criticising it. Actually we find criticism from judges, particularly from the retired Supreme Court Judges. They say that the appointment of judges is not up

to the standard. Therefore, the number of cases pending in courts is increasing.

As a result of this there is a backlog of 2.5 lakh cases in the Supreme Court and more than two million cases in different courts of all the States. I think this law will reduce some burden on the courts. It will also give an opportunity to the people to move the courts for set.lement of their disputes. This Bill has been brought forward in the light of the liberalised economic policy of the Government. India is a member of the UN International Commercial Trade Law. Madam, this Bill has been necessitated because of the circumstances which have resulted from the policy of the past Government to enter into the GATT Agreement. In the name of globalisation many multinational companies are coming which would require to undergo the process of contracts and conditions, Therefore, in the name of globalisation, we are amending our laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith. This is stated in the Preamble to the Bill. The Bill includes one new jurisdiction, that is, the International Commercial Arbitration as adopted by the United Nations Commission on the International Trade Law (UNCITRAL) in 1985. It says that the law will provide desirability and uniformity at the internatioanl level. May I add that this Bill the multinational companies in the country are going to create a lot of problems especially when our laws, like the law of torts, civil laws and the law of damages are not well developed? When the question of paying damages and compensation arises, these laws will be of no help. Now coming to the Bill, the Bill has been divided into four parts. The first part, that is, Arbitration, consists of ten chapters — General provisions, Arbitration agreement. Composition of arbitral tribunal. Jurisdiction of the arbitral tribunals, Conduct of the arbitral proceedings, Making of arbitral awards and termination of proceedings, Reeourse against arbitral award. Finality and enforcement of arbitral awards, Appeals and Miscellaneous. The second part, 'hat is, Enforcement of certain foreign awards, contains two chapters, namely, the New York Convention Awards and the Geneva Convention Awards. The third part of the Bill consists of one chapter, that is, Conciliation. The fourth and the final part consists of supplementary provisions. The Bill does have the three schedules as required. I will come to them later. From the Bill we find that Arbitration has been made indistinguishable from judicial proceedings resulting in three major glaring defects which are as follows: Delay and complexity — the characteristic features of the judicial proceedings have become part of arbitration; secondly, the independence of the arbitral tribunal has greatly been undermined; thirdly, specialisation was compromised due to lack of expertise in commercial and technical matters in the judiciary. In this Bill, no protection has been given to a minor, lt is silent in so far as the question of appointment of the guardian is concerned. The Committee headed by Shri Rajani Ranjan Sahu had also recommended an amendment. May I ask as to why the Committee's recommendations were not taken into consideration? Clause 36 of the Bill says that an award shall be enforced in the same manner as if it were a decree of the court. Here, the words "under the Code of Civil Procedure, 1908" should be included as was recommended by the Committee. Here also, there should be the words "under the Code of Civil Procedure, 1908" as was recommended by the Com-luiitce. Lastly, on this, I would like to say that the present Bill prescribes that all the pending proceedings continue to be governed by the repealed enactments unless otherwise agreed to by the parties. Now, I would like to have clarifications from the hon. Minister on several points. How many arbitral proceedings are pending throughout the nation? How many are pending before each. State appellate authority, that is, before the appellate

court? Since the World Trade Organisation is expected to become the Supreme Court of the global economy, 1 would like to know whether India has placed any representative in the dispute settlement body of the World Trade Organisation. 1 would also like to know what the time prescribed is in case of a reference to the Chief Justice for appointing arbitrators in the case of international disputes. Also, what is the time limit in case of appointment of arbitrators in the case of domestic arbitration? Then, I would like to know whether the time-limit to settle the disputes, which has been reduced from one-and-a-half years to only seven months, as has been mentioned by Shri Chidambaram shall, statutorily be effective in .respect of disposals of all the arbitral matters. If we look at the pendency of cases, the number is increasing in the High Courts as well as in the Supreme Court. There are more than 2.5 lakh cases pending in the Supreme Court, while the High Courts still have to decide two million cases. I think that with the passage of this Bill, the burden ot work on the courts will ease off on the issue of settling the arbitration cases which have been referred to them. So, Madam, I

support this Bill. But. at the same time, I would like to draw the Minister's attention to clause ll of the Bill. Clause ll (3) says: "Failing any agreement referred in sub-section 2 in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator." I would like to ask whether in case of a dispute, a husband Appoints his wife, what will be the position? It will be that an interested party will be appointed. Therefore, I would like to know whether the Government is thinking on the line that an interested personality will not be appointed as the arbitrator or, in other words, that the two arbitrators shall not have the right to appoint an interested personality. Otherwise, it will become meanigless. I would also like to draw your attention to sub-section 4 (a&b). If

WC look at the liine-limit that is given in respect of a pany seeking to appomt arbitrators and the two arbitrators having to appoint the third arbitrator, it is two months. While the Minister, Shri P. Chidambaram, has said that the time-limit in case of settlement of disputes would be reduced from one-and-a-half years to seven months, how are you going to settle the disputes arising both at the international and domestic levels within the stipulated period? Then, 1 would like to draw your attention to clause 9 where the interests of the minor have not been clarified. Even this was recommended by the Standing Committee on Home Affairs.

I would now like to draw the attention of the hon. Minister to clause 36 of the Bill regarding enforcement of foreign awards. I would not read the whole clause. I would only read the last line of the clause which says, "...award shall be enforced in the same manner as if it were adccree of the Court".

But the enforcement of the decree should be in consonance with some law. The procedure has not been prescribed in this Bill. There should be some procedure laid down for this purpose. So far as our country is concerned, it is only the Code of Civil Procedure. The expression "Code of Civil procedure" should be there.

I would now refer to Article V-2 (a) which says, "the subject-matter of the difference is not capable of settlement by arbitration under the law of that county...". What do you mean by this? We don't know what law is going to be enforced, The term 'arbitration' is there. The term 'conciliation' is there. The term enforcement' is there. But the procedure for adjudication of the decree has not been provided. I would like the hon. Minister to make it clear so that there would not be any ambiguity in this implementation.

I would draw the attention of the hon Minister to Article 1 of the third Schedule which uses the expression, "...in

the territory of any High Contracting Party. .'". I would like to know whether any definition has been given for this "High Contracting Party". Who should be considered as a High Contracting Party? There are many ambiguities in this *hill.* I would, therefore, submit to the hon. Minister that he should make all definitions clear. All the definitions should be inserted in clause 3 relating to definitions. Despite these ambiguities, there are some merits. Therefore, I support the Bill.

Thank you, Madam Vice-Chairman.

SHRI RAMAKANT D. KHALAP: '.ladani Vicc-Cliairman, may I make a request I have another which is under consideration of the other House. ! am required to reply to the debate on that Bill.

SHRI SATISH AGARWAL. Which Bill?

SHRI RAMAKANT D. KHALAP; lt is a Bill to enhance sumptuary allowances and petrol quota for the Supreme Court Judges and the High Court Judges. It is under the consideration of Lok Sabha. If the House permits me, I will leave for the other House.

THE LEADER OF THE OPPOSITION (SHRI SIKANDER BAKHT): Then, who will take the notes here?

SHRI RAMAKANT D. KHALAP: My collegue, Shri Mishra, will take the notes.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Please ask your colleague, Mr. Mishra, to take the notes. As soon as your business finishes there, please come back to this House.

SHRI RAMAKANT D. KHALAP: I will come back, Madam.

SHRI SATISH AGARWAL: We have no objection fo let him go to the other House provided he promises the House that he would be back.

SHRI SIKANDER BAKHT: Madam, wiU the Bill be disposed of today or is the discussion going to spill over to some other day?

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): No. We will pass it today itself.

SHRI SATISH AGARWAL: Let us make sure that the Minister will come back.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): He has to come back

SHRI PRANAB MUKHERJEE: He will try to come back. Once he goes to the other House, he will be the preserve of that House.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): He will try to come back.

SHRI RAMAKANT D. KHALAP: I am grateful to the House for the permission.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Now, Shri Som Pal.

श्री सोमपाल (उत्तर प्रदेश): धन्यवाद उपसभाध्यक्ष महोदया, मैं इस प्रस्तावित विधेयक के समर्थन में खड़ा हुआ हूं।

श्री सतीश अग्रवाल: हम भी समर्थन में खड़े हुए थे।

श्री सोमपाल: बहुत धन्यवाद करता हूं और आभार व्यक्त करता हूं। महोदया, माननीय सतीश अग्रवाल जी ने जिस रचनात्मक दृष्टिकोण से इस विधेयक पर चर्चा प्रारंभ की, उन का हार्दिक धन्यवाद करना चाहता हूं।

श्री सतीश अग्रवाल: आप को बहुत-बहुत धन्यवाद इस कम्प्लीमेंट के लिए।

श्री सोमपाल: महोदया, न केवल उन का दृष्टिकोण रचनात्मक रहा बल्कि कतिपय उन के सकारात्मक सुझाव भी रहे और मैं सरकार और संबंधित मंत्री से यह निवेदन करना चाहूंगा कि जो उन्होंने सुझाव दिए है, विशेष अधीनस्थ विधान की निर्माण प्रक्रिया के संबंध में जो चिंता व्यक्त की है, वह स्वीकार की जानी चाहिए और उस को शीघ्रतातिशीघ्र गति देने का काम किया जाना चाहिए क्योंकि इस प्रकार की अनिश्चितताएं अगर

इतने महत्वपूर्ण विधायकों के संबंध में रहेंगी तो वह विवादों को सुलझाने का उद्देश्य पूरा करने की अपेक्षा उस को भड़काने का काम ज्यादा करेगी। मैं उन की इस चिंता से निश्चित रूप से सहमत हूँ। यह बात अवश्य है कि जब भी कोई विधेयक लागू होता है तो अधीनस्थ विधान, जिस की एक समिति हमारे सदन में भी है और दूसरे सदन में भी है, उस का मुख्य कार्य यह है कि वह यह सुनिश्चित करे, बल्कि हमारी माननीय उपसभाध्यक्षा जी उस समिति की अध्यक्ष है कि वह अधीनस्थ विधान, नियम, उप-नियम बनते रहें और जो विधान हम ने यहां पारित किए हैं और जो विधायी कार्य हम ने यहां किया है, उस के मूल भाव को, उस के मूल उद्देश्य को समाविष्ट करते हुए, उस से ओत-प्रोत होते हुए जितनी आवश्यकता हो, उसी प्रकार नियम, उप-नियम बनते रहें और उस विधेयक और उस के उद्देश्य को लागू करने में सकारात्मक कार्य करें। महोदया, उन्होंने यह बात कही कि 1940 का जो अधिनियम पूर्व से लागू था, पंचायत विधेयक, आर्बिट्रेशन बिल 1940 जो इतने समय से बहुत सफलतापूर्वक इस विषय पर कारगर और प्रभावी कार्य करता रहा, उस की कुछ धाराओं को हम ने रिपील किया है। रिपील किया है अग्रवाल साहब, पर इस को रिप्लेस भी किया है। उस के स्थान पर दूसरी स्थानापन्न धाराएं इस में समाहित की गयी है। इस तरह वह मात्र रिपील नहीं किया गया है। तो जो बात आप ने कही कि वैक्यूम है, शून्य है, ऐसी बात नहीं है, उस के स्थान पर दूसरी धाराएं इस में आ गयी हैं।

श्री सतीश अग्रवाल: शून्य हो गया है, नियमों के अभाव में।

श्री सोमपाल: नियम तो अनंतरित प्रक्रिया है। वह तो बाद में फोलो होती है। वह तो होनी ही है। प्राक्कथन की लंबाई के विषय में कुछ बात कही गयी, लेकिन चूंकि बहुत विस्तृत विषयावली को इस में कवर करना है, उस का नोटिस लेना है, उस का संज्ञान देना है, इसलिए प्राक्कथन का लंबा होना तो स्वाभाविक था और वह कोई अस्वाभाविक बात नहीं है। जहां तक आप ने संयुक्त राष्ट्र संघ के अंतर्राष्ट्रीय व्यापार संबंधी आयोग और इस के संबंधित अधिनियम से संबद्ध सामग्री को उपलब्ध न कराने की बात कही है, मैं आप की बात से सहमत हूं, पर शायद किसी भी विभाग द्वारा इस प्रकार की संबद्ध सामग्री उपलब्ध नहीं कराई जाती, वह तो हमारे सदस्यों का काम होता है कि हम स्वयं उसे ढूंढ लें।

श्री सतीश अग्रवाल: लायब्रेरी में उपलब्ध रहे।

श्री सोमपाल: लायब्रेरी में भी उपलब्ध नहीं है तो वह आक्षेप का विषय है। वह उपलब्ध होनी चाहिए। जहां तक पंचाट के द्वारा या पंच फैसले और मध्यस्थता के द्वारा विवादों को सुलझाने की बात है, यह अवधारणा या यह सिद्धांत भारत के लिए नया सिद्धांत नहीं है। हमारी प्राचीन परंपरा में, हमारे इतिहास में और हमारी बहुत सुदृढ़ और सुचारू पंचायत प्रणाली में इस के सारे तत्व इस से अधिक सुदृढ़ रूप में उपलब्ध है। इस विधेयक में ही नहीं बल्कि जितनी भी हमारी संस्कृति में इस प्रकार की चीजें उपलब्ध है, चाहे वह चिकित्सा से संबंधित हों, चाहे योग से संबंधित हो या विधि विज्ञान की प्रक्रिया से संबंधित हों, विवाद सुलझाने से संबंधित हो या राष्ट्रीय सद्भाव, सरकार का कामकाज चलाना, अर्थात हमारे सभ्यता विकास के जिस स्तर पर पहुंची हुई थी, वे सारे तत्व हमारी उस प्रचानी परंपरा में उपलब्ध हैं, पर विडंबना यह है कि जब उन्हें पश्चात्य देशों की ओर से मान्यता प्राप्त होती है तब हम उसे ज्यादा गौरवपूर्ण तरीके से अंगीकार करते है।

(उपसभाध्यक्ष महोदया), हमारे समाज के सभी समुदायों में संस्थागत रूप से और एक सशक्त संस्थागत रूप से यह व्यवस्था विद्यमान ही है पंचायत की। मैं एक ऐसे ही क्षेत्र से आता हूं। पश्चिमी उत्तर प्रदेश, हरियाणा, पंजाब और राजस्थान में कई सौ वर्षों से नहीं बल्कि हजारों वर्षों से न केवल समाज का संचालन, उसके विवादों को सुलझाने का कार्य ही अपितु उसकी सेना की रचना, सेना का प्रशासन, न्याय प्रणाली का प्रशासन, विवाह, भूमि, अर्थ, दूसरे व्यापारिक और व्यावसायिक झगड़ों और विवादों को सुलझाने की एक बहुत सशक्त परंपरा हमने कायम की थी। मैंने बचपन में देखा है, जब इस प्रकार के विवाद गांवों में खड़े हो जाते थे तो उसके लिए पंच फैसला करते थे, जिसमें पांच लोग, सात लोग होते थे। इवेन नंबर नहीं होता था, विषम संख्या रखी जाती थी, अनइवेन नंबर रखे जाते थे। उसमें जो दोनों पक्ष होते थे, वह अपने आपको समर्पित भाव से लेकर कह देते थे कि जो भी आप निर्णय तय कर देंगे, उसको हम मान लेंगे । वह बाध्य होते थे और इससे उनके न्यायालय में जाने, वकीलों पर खर्च करने, समय बरबाद करने की जरूरत नहीं होती थी। इधर जो न्यायालय प्रक्रिया अपनाई जाती है निर्णय करने की, वह कलह को समाप्त करने वाली नहीं बल्कि कलह को स्थाई रूप देने वाली होती है। वह कलहज होती है, सुलहज नहीं होती। हमारे यहां सुलहज का भाव रहा है और समर्पण भाव से दोनों पक्ष अपने आपको इसके लिए तैयार रखते थे।

महोदया, इस प्रणाली का विकास हमारे देश में कोई आकस्मिक घटना नहीं है। यह एक बहुत स्वाभाविक घटना है और यह मानव मात्र के मूल भाव से संबंधित

है, क्योंकि प्रत्येक प्राणी, मानव सहित प्रत्येक प्राणी की जो मूलभूत जैविक, नैसर्गिक आवश्यकताएं है, उनमें हमारे दर्शन के अनुसार आहार, विद्या, भय और मैथुन, यह चार प्रकार के मूल भाव प्रत्येक प्राणी में सामान्य रूप से पाए जाते हैं। यह सार्वभौमिक और शाश्वत सत्य है। उनसे जनित जो हमारी आवश्यकताएं हैं, उनकी पूर्ति के लिए प्रत्येक व्यक्ति चाहता है कि उसको निर्विवाद विचरण और संचरण करने की स्वतंत्रता हो। यह व्यक्तिगत स्वतंत्रता मानी गई है। इसी को हमारे संविधान में मूल-अधिकारों में समाविष्ट किया गया है। यह भी तथ्य है कि एक दूसरे के अधिकारों के अपहरण की प्रवृत्ति भी प्रत्येक समाज में, प्रत्येक देश में शाश्वत और सार्वभौम रूप से पाई गई है और उस बात को समाप्त करने के लिए उस विवाद को दूर रखने के लिए समाज की सहिष्णुता, शांति और भाईचारा बनाए रखने के लिए प्रत्येक काल में यह प्रयास रहा है कि कुछ ऐसे नियम बनाए जाएं, कुछ ऐसी आचार संहिता बनाई जाएं कि जो इन आपाधापी स्वार्थता के ऊपर अंकुश रखें यानि उसके ऊपर एक रोक लगे और सब नागरिक परस्पर सद्भाव से रहें एक दूसरे के मूलभाव का सम्मान करते हुए जब इस प्रकार के नियम, उप-नियम, आचार संहिता को राज्य के सत्ता के माध्यम से लागू किया जाता है तो उसे कानून और विधान की संज्ञा दी जाती है।

महोदया, यह भी शाश्वत सत्य है कि जब कभी जो भी विधान या विधि का निर्माण किया गया है और अगर वह उस सहज मानवीय संवेदना के भाव की अवहेलना करता है तो उसको लागू करना कठिन हो जाता है। अगर राज्य सत्ता अपनी सत्ता के नशे में उसे शक्ति के साथ लागू करने का प्रयास करे तो विद्रोह हो जाता है, आक्रोश पैदा हो जाता है। कम्युनिस्ट देशों में रूस जैसे शक्तिशाली राज्य का विघटन, उसका पतन इस बात का प्रमाण है कि इस सहज मानवीय संवेदना का ध्यान रखा जाना चाहिए। इसलिए अनुभव किया गया, यह अहसास किया गया, न केवल भारत के विधि-विशेषज्ञों द्वारा, विधि वेताओं द्वारा अपितु पूरे विश्व के विधि-विशेषज्ञों के द्वारा.... और तो और संयुक्त राष्ट्र जैसी शिखर और सर्वोच्च संस्था के द्वारा कि इस प्रकार के विवाद क्योंकि अब अंतर्राष्ट्रीय व्यापार और वाणिज्य में जिस प्रकार की आशा थी, प्रगति और वृद्धि हुई है, यह आवश्यक है कि इस प्रकार के विवादों को सुलझाने के लिए परस्पर चर्चा करना, मध्यस्थता करना, कचहरियों में न जाना, समय बर्बाद न करना, जो व्यय व्यर्थ होता था उसको बचाना और कटुता किसी तरह से न रहे और ज्यादा समेकित रूप से इन विवादों को सुलझाने की प्रक्रिया अंगीकार की जाए, इस आवश्यकता को अनुभव करते हुए अंतर्राष्ट्रीय स्तर पर "यूनिसिट्रल" नाम की संस्था, जो संयुक्त राष्ट्र संघ का अंतर्राष्ट्रीय व्यापार कानून से संबंधित आयोग है, उसने यह संस्तुति की और उसने अपने सदस्यों से आग्रह किया और प्रेरणा की कि अपने राष्ट्र के आंतरिक और दूसरे राष्ट्रों से संबंधित अपने व्यापार, व्यवसाय और सौदे जो होते हैं और अब खास तौर से न केवल चीजों का व्यापार होता है, बल्कि बौद्धिक सम्पदा का व्यापार, जो इंटलेक्चुअल प्रॉपर्टी है उसकी ट्रेडिंग, पर्यावरण से संबंधित चीजों और दूसरे यात्रा और कौन सा किसका जहाज कहां जाएगा, कितनी दूरी तक जाएगा और समुद्र में उसकी सीमा का, प्रभुता का क्षेत्र कितना है, इससे संबंधित जितने कानून हों, उनको एक समेकित और समग्र रूप से स्थापित करके एक नए कानून को लाया जाए जो पुराने तीन कानूनों के स्थानापन्न कानून के रूप में आज इस सदन के समक्ष माननीय मंत्री महोदय ने प्रस्तुत किया है। मैं इस सदन की ओर से स्वागत करता हूं मंत्री जी का और सरकार का कि उन्होंने इस आवश्यकता को अनुभव किया और अंतर्राष्ट्रीय समुदाय की इच्छा को अभिव्यक्त करते हुए, उसको स्वीकार करते हुए यह विधेयक यहां प्रस्तुत किया। अभी तक हमारे देश में जो पंचायत संबंधी कानून या अधिनियम थे, विशेषकर यह जो आर्बिट्रेशन एक्ट 1940 है, यह ब्रिटिश प्रणाली से हमें विरासत के रूप में मिला था और मैं पुनः कहना चाहता हूं कि यह हमारे विडम्बना है और यह हमारी एक कमजोर मानसिकता का प्रतीक है कि अपने यहां इस प्रकार की सुदृढ़ व्यवस्थाओं और सुगठित कालसिद्ध परम्पराओं और उपयोगी व्यवस्थाओं के होते हुए भी हम उन्हें तभी स्वीकार करते हैं जब पाश्चात्य देश उन्हें स्वीकार करते हैं। वर्तमान विधान का इतिहास अगर हम देखें तो ईस्ट इंडिया कम्पनी आई और ईस्ट इंडिया कम्पनी को तत्कालीन ब्रिटिश शासन द्वारा जो अधिकार प्रदत्त किए गए थे उनके अंतर्गत सबसे पहले बंगाल रेगुलेशन एक्ट 1772, वह ब्रिटिश कम्पनी यहां लायी। उसके बाद सिविल प्रोसिजर कोड 1859, 1877 तथा 1882 में निहित प्रावधानों में जो पंचायत की व्यवस्था थी, उससे काम चला और उसके उपरांत इंडियन आर्बिट्रेशन एक्ट 1899 पारित किया गया, वह भी इंग्लैंड के 1879 के उसी प्रकार के पारित कानून की अनुकृति थी, उसकी प्रतिकृति थी और वर्ष 1940 इसमें एक महत्वपूर्ण पड़ाव माना जाता है, जिस समय यह जो वर्तमान हमारा 1940 का कानून लागू था, जब इसके पारित किया गया। अंतर्राष्ट्रीय स्तर पर पहले 1923 में और बाद में 1937 में "जिनेवा प्रोटोकोल" एक नया

आचार स्वीकार किया गया अंतर्राष्ट्रीय स्तर पर और उसके बाद फॉरेन आर्बिट्रल अवार्ड एन्फोर्समेंट एक्ट 1958 और उसी प्रकार फॉरेन अवार्ड्स एक्ट 1961, जो उसके बाद लागू किया गया, इन कानूनों ने अपने-अपने समय में, अपने अपने स्थान पर अच्छा काम किया राष्ट्रीय और अंतर्राष्ट्रीय स्तर के ऊपर और अब एक समग्र, इन सारी विधाओं को समाहित करता हुआ, इनके सारे मूल तत्वों का समावेश करता हुआ जो नया कानून प्रस्तुत हुआ है, मेरी मान्यता है कि राष्ट्रीय-अंतर्राष्ट्रीय स्तर पर जितनी इनमें खामियां थीं, उनको पूरा करके यह सर्वाधिक समग्र, सर्वग्राही, समेकित सम्यक और प्रभावी कानून बनेगा। पुराने कानूनों की यह कठिनाई थी, खास तौर से 1940 के आर्बिट्रेशन एक्ट की, कि उसके जितने भी निर्णय हुए, प्रायः सभी निर्णयों को न्यायालय में चुनौती दी गई। तो जो उसका मूल उद्देश्य था कि न्यायालय से बाहर एक प्रक्रिया स्थापित हो, न्यायालय में नहीं जाना पड़े, जो अनावश्यक कटुता रहती है, जो अनावश्यक समय बर्बाद होता है, जो अनावश्यक धन व्यय होता है, उसमें कमी लाई जाए।

और निर्णय के उपरांत जो कटुता बनी रहती है, उसकी स्रोत को समाप्त किया जाए, उस मूल उद्देश्य से यह चीज भटक गई थी। इसलिये वह एक असमाप्त, अंनत, अनावश्यक सी चीज बन गई थी। उसको समाप्त करने के लिये इस नए कानून को लाने का विचार किया गया। निश्चित रूप से यह नया कानून पूर्व की अपेक्षा कम औपचारिक, कम तकनीकी होगा और वैधानिक तर्क-वितर्क में न उलझकर परस्पर सद्भाव पैदा करने के लिये और ज्यादा सरल प्रक्रिया अपनाने वाला साबित होगा। इसलिये इसकी आवश्यकता महसूस की गई।

महोदय, पहले वाले कानून में एक बात यह भी थी कि विषयनिष्ठ होने के बजाय, तटस्थ होने के बजाय, निष्पक्ष होने के बजाय, उसमें कुछ विकृतियां आ गई। उसमें व्यक्तिपरकता आ गई थी और उसका दुरुपयोग किया जाता था। मनमाने ढंग से अपने ढंग के लोगों को उसमें पंच-फैसले के अधिकारी नियुक्त कराया जाता था। उस व्यवस्था में सुधार करने का काम यह कानून करेगा।

महोदया, एक बात यह भी है कि ये जितने भी वैधानिक प्रावधान थे, सब जगह अलग-अलग थे। एक देश में कुछ था, दूसरे देश में कुछ था। अब उन सबका एकीकरण करके एक समेकित कानून यहां लागू किया जाएगा। इसमें और एक खामी आ गई थी जिसकी ओर इंगित किया हमारे मित्र श्री गोपाल सिंह सोलंकी ने कि न्यायालयों में वादों का बहुत भार हो गया था, उनका अधिसंचय हो गया था, बहुत बैकलॉग हो गया था और न्याय में इतना विलम्ब होने लगा था कि जो जानी-मानी उक्ति है विधान के संबंध में कि न्याय विलम्बित होता है तो न्याय से वंचित किया जाता है न्याय प्राप्त करने वाले लोगों को अर्थात "जस्टिस डिलेड इज जस्टिस डिनाईड"। यह बात हो रही थी। तो न्यायालय के वादों के जमाव को भी इससे कम किया जा सकता है। न्यायालय से बाहर इन फैसलों को किया जा सकता है।

एक और बात यह है कि बहुत कारणों से इस कानून का होना या न होना असंगत हो गया था क्योंकि इसका उपयोग प्रायः समाप्त हो गया था। सो निर्णय जो इसके अंतर्गत किये जाते थे, सबको चुनौती दी गई थी। तो इस तरह से यह कानून हास्य का विषय बन गया था। इसलिये इसको प्रभावी बनाने के लिये नया कानून लाना आवश्यक था। इसलिये सर्वोच्च न्यायालय ने, भारत के विधि-आयोग ने, भारत की लोक लेखा समिति ने और देश और विदेश के विधि विशेषज्ञों ने महसूस किया कि एक नया कानून आना चाहिये और इस वैकल्पिक, कम तकनीकी, कम व्यय-साध्य, सरल और एक-दूसरे के दृष्टिकोण को समझने वाली व्यवस्था का निर्माण करने की आवश्यकता महसूस की गई। इसलिये यह विधेयक व्यावहारिक होगा और कम कुंठाओं को जन्म देने वाला होगा।

महोदया, मैंने कहा है कि यह विधेयक संयुक्त राष्ट्र संघ के अंतर्राष्ट्रीय व्यापार कानून से संबंधित आयोग का जो कानून था, उस पर आधारित है और इसमें कामन ला और सिविल ला, दोनों का संश्लेषण किया गया है, दोनों का समन्वय किया गया है और विधि के इन दोनों आधुनिक युगीन स्रोतों के ऊपर यह कानून आधारित है और इसमें जितने भी तत्व हैं उनको आत्मसात करके यह नया कानून हमारे सामने लाया गया है। इस प्रकार मैं मानता हूं कि यह कानून विधि और वैधानिक प्रक्रिया को एक नयी दिशा देने का काम करेगा।

महोदया, यह कानून द्विपक्षीय, बहुपक्षीय, अंतर्राष्ट्रीय सभी प्रकार के विवादों को आम सहमति से, मध्यस्थों की नियुक्त से, आत्मसमर्पण के भाव से, सुलझाने की भावना से और निपटारे की भावना से काम करेगा। जैसा मैंने पहले कहा है कि संयुक्त राष्ट्र संघ ने अपने सभी सदस्य राष्ट्रों को यह सुझाव दिया था और यह प्रेरणा दी थी कि वे इसको अंगीकृत करें। इस कानून में इन तीन कानूनों का समावेश किया गया है।—आर्बिट्रेशन प्रोटोकाल ऐंड कन्वैंशन 1937, आर्बिट्रेशन ऐक्ट 1940 और फारेन एवार्ड रेगुलेशन ऐंड एनफोर्समेंट ऐक्ट 1961

महोदया, मैं इस सदन के माध्यम से अपने विपक्ष के साथियों से निवेदन करूंगा कि वे इस विधेयक का समर्थन करें और अगर इसमें कुछ खामियां रह गई हैं तो उनकी ओर सरकार का ध्यान दिलाएं। वैसे कुछ खामियां तो प्रायः सभी विधेयकों में रह जाती हैं। जब से अंतर्राष्ट्रीय व्यापार संगठन की स्थापना हुई है और जैसा मैंने पहले कहा कि व्यापार और वाणिज्य का प्रसार हुआ है, उसमें वृद्धि हुई है उनके अपने अनुभवों से और दूसरे राष्ट्रों से और अंतर्राष्ट्रीय स्तर पर एक दूसरे राष्ट्र के आपसी और समझौतों के अनुभव से अगर उसमें खामियां रहेंगी तो उसके ऊपर संशोधन लाए जा सकते हैं। संशोधन के लिये हमारी तत्परता सर्वविदित है। हम तो संविधान में संशोधन करने में भी इतने तत्पर हैं, इतना शायद विश्व का कोई राष्ट्र हो। तो उसमें कोई कठिनाई नहीं होगी। आप जैसे विधि विशेषज्ञ बैठे हैं। जब भी सुझाव देंगें, वह सुधार करने के लिये सरकार को तत्पर रहना चाहिय। मैं पुनः आपसे आग्रह करता हूं कि इसको पारित करें और समर्थन दें।

SHRI VAYALAR RAVI .(Kerala): Madam Chairperson, I endorse what Shri Som Pal has said and of course,I also agree with the Bill. My only objeclion is to the issue of ordinance. Mr Agarwal is sitting on this side, he will repeat to say that the ordinance is bad. I had the opportunity to be in Lok Sabha along with him in 1977 when he was the Minister. If my memory is right, in those days also an ordinance was issued, in Morarji's Cabinet. Ordinance is not a crime and it is not illegal. It is the circumstances which are forcing the Government in power to issue ordinances. Also, Madam, we are all witnessing for the last two years in this House that we are giving importance to matters, political matters rather than legislation. This legisaltive business is being postponed everytime. We cannot blame anobody. We should share the balme. But I agree with him on one important point wliich is the practice here. An ordinance is issued but the rules are never framed. An ordianace shows the urgency of a legislation. When you show urgency of a legislation, can it be implemented without the rules? That is a very valid point raised by my friends, Shri Satish Agarval, and I fully agree with that view. The Law Minister who advises every Ministry on the legal question must answer this question and he must look into this question because at least in furture when an ordinance is issued repeatedly, more than once, if there is an urgency, then it can be implemented provided there are rules according to the law itself. I am not repealing what I said. I hope the Law Minister will look into this and there can be standing orders which his Ministry should take note of In future. This mistake shall not be repeated. Madam Chairperson, this law is a comprehensive legislative which is repealing three enactments which are pending since 1937. I do not want to say what it is. After independence we made only one enactment, i.e. in 1967. So this comprehensive legislation will give room not only to arbitration but to a new element which is a legal bettle, that is the conciliation process. As is rightly put in the Statement of Objects and Reasons, it says, "Like arbitration, conciliation is also getting increasing worldwide recognition as an instrument for settlement of disputes. There is, however, no general law on the subject in India." So this legislation will help the process of conciliation as one of the major important components for settlement of disputes. That is also an important factor. Madam, in the country today and the world over, we are nearing the 21st century. The whole situation is being changed. There is globalisation on the economic front, trade and, of course, many things have been changed. After GATT Agreement and establisment of the World Trade organisation, it has become obligatory on the part of every country which is a party to that Agreement or a Member of the World Trade Organisation that international conventions be respected. In this connection, a point has been raised by my friend, Shri Satish Agarwal, regarding the model law and rules made by the United Nations Commission for International Trade and Law. But anyhow, this annexure shows after clause 44 which gives the definition, gives some kind of eleboration on con-

vention.

1 think the hon. Minister might have thought ft sufficient, might have thought it enough, to put it in the First Schedule, as an explanation to clause 44. He would have felt that it was enough. But I agree with you, of course. It is advisable to have the Model Law. If you had the Model Law, it would have been better.

Madam, today, when foreign trade is growing day by day, every country is competing to increase its share and earn more foreign exchange. We are also competing in a big way. We arc competing with the other developing as well as developed nations to improve our performance. Commercial transaction has become one of the inevitable parts of existence of every nation-State. No nation-State can exist without an inflow of foreign exchange which comes through foreign trade. Every country wants to consolidate its economic strength.

Foreign trade should always have credibility. The credibility of a nation exists on how the country fulfils its contractual obligations. Of course, in every country, there will be some people who are crooks, who are cheats. Wherever there is laxity in regard to the quality, frauds would increase. These things sometimes happen. There may be complaints coming to the different agencies in the country. There are always some people who, in their eagerness to make quick money, resort to unwanted practices. Such things have to be checked. To take care of such situations, naturally, every State must have a law which gives an assurance to the foreign buyers, to the people of other countries, that if anybody cheats them, their interests would be protected.

Madam, there may be many other Conventions, many other procedures, but arbitration and conciliation is one of the main, important, components of this. This is why, the New York Convention and, of course, the United Nations Commission on International Trade Law, were seized of the matter. In our country also, the Law Commission was seized of the matter and, as has been rightly pointed out here by the hon. Minister, the Law Commission submitted a report. They also felt the necessity of a comprehensive legislation. That is why this Bill has come.

The main objectives of the Bill have been stated very clearly here. One of the main objectives is: "to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes". Similarly, many other things have been said.

Now, there is the other point also. I agree with my friend Judiciary has been burdened with all kinds of cases. My friend has rightly pointed out. Many cases have been pending for a long time in various courts . A lot of time is taken before a case is decided. Naturally, these kinds of disputes may add to the burden. But Madam, unfortunately, tendency has. developed ------ I do not want to go into it now; a Bill is coming where the judiciary is more interested in public interest litigation. They are not interested in other things. They are interested in public interest litigation. Today, in the Fourth Estate, more news comes from the judiciary than from Parliament. Unfortunately, a situation is developing. It is going to be a lawyer's paradise. Of course, as a lawyer, I am happy about it. *(Interruptions)* You are a practising lawyer, Mr. Agarwal; I am not a practising lawyer.

Now, the judiciary may take note of such things. I am not, however, going into the question of judicial activism, at the moment. My only point is, the judiciary cannot take upon itself the responsibility of running this country. It should be left to the Parliament; it should be left to the Executive. Unfortunately, a tendency is developing. We have already seen it. I think this issue has to be debated at a later stage. I hope you would agree with me. I know you would agree with my point.

SHRI SATISH AGARWAL (Rajasthan): I agree with you on some points.

But when Parliament abdicates its responsibilty, when the Executive abdicates its responsibility, what is to be done?

SHRI VAYALAR RAVI; I agree. This has also to be debated. I have no quarrel on that. *(Interruptions)*

SHRI SATISH AGARWAL: There was the question of out-of-turn allotments. I raised it in December, 1994, because I did not get a house for ten months. It was not taken up; the calling-Attention Motion was not taken up. Ultimately, somebody filed a writ petition and then the court took note of it. In the same way, when we raised the issue of gas agency, Parliament did not respond. Naturally, the court took cognisance of it. That is the position.

SHRI VAYALAR RAVI: But there are many devices, many methods, in Parliament also.

SHRI SATISH AGARWAL: Then, there is the question of withdrawal of security cover to the former Chief Minister of Tamil Nadu. We raised it today. The Minister assured us. We are hop>eful that he will do something.

But then a writ petition has been filed in the Delhi High Court by the former Governor of Tamil Nadu, Shri Bhishma Narain Singh. So, why was security neglected?

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr, Agarwal, are you addressing the Chair or the hon, Member?

SHRI SATISH AGARWAL: I am making him understand, Madam.

SHRI VAYALAR RAVI: This is a matter on which we will definitely get a chance. The other Bill is coming before the House and then we can have a discussion.

Madam, there are many arbitrations goings on in this country today, and. many arbitrations are challenged sometimes because they are not in tune with ethics. So ethics is the most important factor which this Bill takes into account because the Judges of the High Courts and the Supreme Court can take it into account and appoint arbitrators when a time-frame is fixed and everything is there.

As far as this Bill is concerned, Madam, there are two or three important points I have to make. Apart from the recommendations of the Standing Committee, may I draw the attention of the hon. Minister to clause 3 in Chapter I? Madam, nobody is taking notes. The office can take note of it, anyway.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mishraji is taking notes.

SHRI VAYALAR RAVI: Mishraji has changed his seat.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): He has changed his seat, but he is taking notes.

SHRI VAYALAR RAVI: He is an old friend of mine.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Yes, you have every right to say it.

SHRI VAYALAR RAVI; I refer to clause 3(1) (b) on page 4 which is very important, because it deals with "Receipt of written communications." It says:

> "If none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it."

This is a regular process. Even in the judicial process you have to advertise it in the newspapers because this can be manipulated. Mere sending of a letter is not enough. There should be an advertisement also even as the subordinate courts do it. There should be a notice by publi-

cation in important newspapers. 1 think a provision should be added that it should be published in the newspapers also.

Then,'look at the report of the Standing Committee. This is with regard to clause 9. My friend here has already mentioned about protection of minors. The Arbitration Act of 1940 contains a provision for the appointment of a guardian for a minor or a person of unsound mind. The Standing Committee also recommended the same, that this provision should be added to clause 9. I find that it is not included in this Bill. I hope the Minister would promise this House that he would bring this amendment to clause 9. It can be put in clause 9(d). I hope the hon. Minister will accept this recommendation and bring the amendment—this is very important—because it is already there in the law since 1940.

Clause ll, of course, is already there.

Clause 34 also is equally important. It looks as though the recommendation has not been accepted by the Minister. To the Explanation in clause 34(2)(b), they have suggested one addition. That is, after the word 'corruption' in the last line of the Explanation they want to add the words "or was in violation of Section 75 or Section' 81." It is a very harmless, important, suggestion, and it has to be added here in the Explanation. The Explanation reads:

> "Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption."

So, these words can be added to it. It is already suggested, So, the suggestion made by the Standing Committee with regard to clause 34 must be accepted. There is no harm.

Then, I come to clauses 36 and 37. These are equally important because, as far as eiiforcemcnt is concerned, reference to the Civil Procedure Code has also been suggested. I do not know what is preventing the Minister from accepting this provision.

Madam, the Standing Committee had elaborate discussions and made limited recommendations on this Bill. I find no reason why the Government is not accept these important suggestions.

Madam, this Bill was pending for a long time, and today we are going to pass it. I hope this Bill will bring credibility to all commercial transactions between this country and other countries and will help the new thinking which has come all over. Our country has to march ahead. We are noi living in isolation. We are part of the whole community. We make transactions. We live by our own strength, the will of the people, the economic strength, the strength achieved by development, the strength achieved by our own effort, the human effort and the availability of the manpower which is contributing to productivity which enables this nation to compete with the world, with every other country in the world. That competition can be made with the credibility of the nation which will honour the commitmejit which we make with other countries. The Govemments may change. The Congress Party may rule in Maharashtra. Sometimes, the BJP-Shiv Sena alliance may come. Unfortunately, sometimes, the new Government takes political decisions which make it land into a problem. One was the Enron Problem. I do not have the details to defend the Enron Project. I am not defending it. But this question is there. This Act should have come earlier. It would have settled the whole issue before you people landed in the problem. The BJP friends accept that the Enron Project is a necessity for development of the western part of the country, especially the State of Maharashtra. That is why they renegotiated it with Enron. They entered into an agreement with Enron and compelled the 15-day Government of Mr. Vajpayee to

sign only one document. That was the counter-guarantee for the Enron Project which they had cancelled. So, what does it show? If shows that sometimes hasty decisions taken by governments for political reasons can land them into problems. As it is, there is no law to regulate a conciliatory arbitration process. So, I hope that this Bill will help to prevent such political actions which will damage the Government.

I will say only one thing about Enron. I hope I have time, Madam. The Enron Project was attacked. There was a campaign that was a burden on the consumer, that there was a loss to the exchequer and that it should be thrown into the Arabian Sea.

I happened to see a detailed report, I think, in "THE FRONTLINE" magazine. "THE FRONTLINE" has reported that it has been proved that the present Govenment of Maharashtra entered into an agreement with Enron with more burden on the consumer and mere loss to the exchequer of the nation. ...*{Interruptions)*

Yes, it is. ... *(Interrutpions)*

SHRI SATISH AGARWAL: This is not the discussion now. We are good friends. Today morning the Government has replied to a question that the old guarantee which was given by the Congress. Congress stood valid today and that there was no fresh need for a further confirmation of that. What the BJP Government did was not at all necessary to be done. ...*(Interruptions)*

SHRI VAYALAR RAVI: Okay, I do not mean any offence to you. But it shows that the Congress Government took right decisions in right time in the interest of the nation.

SHRIMATI URMILABEN CHIMAN-BHAI PATEL (Gujrat) The Congress Government gave the guarantee only fof the first part. The second part was added by the BJP Government. It is a fact.

SHRI SATISH AGARWAL We are not discussiag that. I am only saying, had this law been passed earlier, probably arbitration proceedings would not have started in London.iSHRI VAYALAR RAVI: That js correct, Madam , my point is simple. Issues like in Enron would have been settled properly had this Bill been passed in this House some months earlier. This kind of issue has come in for litigation and they have gone to court, to the High Court and the Supreme Court, because we could not pass this legislation earlier. That is why I am saying this. I am not talking of the merits or demerits of Enron. I am happy that Mr. Aganval has admitted that the former Congress Government's guarantee is still valid. It means that you are under guarantee, we are under guarantee and they are under guarantee. That means the Congress had taken a right decision in right time in the interest of the nation. So, this enactment also is to protect the interest of the nation, the interest of our commercial transactions and to go with the changed world, with the globalisation and at the same time to protect the national inter-ests. We cannot surreader'or compromise the national interest. I hope this enactment will increase our credibility, which in turn will increase our standing in the world forum of commercial transactions. Thank you, Madam.

DR. BIPLAB DASGUPTA (West Bengal): Madam, when I first saw the title of the Bill, I thought it had something to do with the trade union. So, I referred it to the trade union comrade, Jibon Roy. He looked into it and re-turned it to me saying that it had nothing to do with disputes between trade unions and companies. It deals with disputes between companies and companies. Moreover, it is concerned with commercial business and commercial activities. So, I have to handle it. When I looked into 41 pages, I found that there is less of commercial issue involved than very intricate legal issues. My understanding of economics was not enough to allow me to go through the Bill. I had to draw on my

education in few nearly 40 years ago, when I was a part-timer in law, while I was doing M.A. in Economics, so, when 1 looked through it, I found a maze of legal jargons, legal body traps and landmines. On the whole the Bill is very satisfactory. There is not much wrong with the Bill. I do not challenge the fraternity of the Bill. There may be some dispute about the fraternity of the Enron issue and not of this Bill, lt is a good Bill. So, we have not difficulty in supporting it.

While looking at the Bill, I found there is a dispute mainly about the procedure. If there is a dispute between two companies, how to settle the dispute without going to court? You appoint some arbitrators to arbitrate. Then what should be the procedure for arbitration? When to go to court, how the cost should be shared and how the award should be implemented? These are the things which are dealt with in these 41 pages. But I agree with some of the points which have been made already. First of all I do not like 'rule by ordinances'. So, to the extent the ordinances are avoidable, it should be avoidable. I also agree that this particular piece of law refers to a munber of important international documents. The first document should have been appended to it or at least should have been made available in the library. I think it may be a good procedure in future that whenever some ssues come up. keep a folder in the library and in that folder all the important legislations could be kept. For example, there is a reference to the United Nations Commission on Industrial Trade Laws, Model Laws of 1985. Then there is also another law of 1980 on conciliation. Then I find quite disturbingly on page 18 a reference to a covention—the New York Convention Award. This is in the title. Nowhere mention of New York is there in the text. It is very, very odd. I think, while Mishra Ji was making a note,—I think he has disappeared... Who is taking notes?

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Bommai is there. He is taking notes.

DR. BIPLAB DASGUPTA: Page 18. "Part II, Chapter I. The title mentions "New York Convention Awards". But in the whole of this part, there is no mention of New York Convention except in the title. There has to be some reference to the Convention in the text itself. It is not there.

Similarly, if you see page 20, there is a reference to the Geneva Convention Awards. There is no mention of the Geneva Convention Awards in the text. You refer to such international documents in the title, but they are not at all mentioned in the text. Even though my law education is very remote, I think this is something very, very pathetic. Something is wrong somewhere in the drafting and that should be conected.

At page 27 also, there is something very disturbing. Article 83 gives too much of power to the Government to frame rules. It says, "If any difficulty arises in giving effect to the provisions of this Act, the Central Gov-ernment may, by order published in the Official Gazette, make such pro-visions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty;". You are actually giving the Government the legislative power. That is very, very disturbing. Satish Ji, maybe you should also listen to me.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Agar-

wal, please listen to Mr. Biplab Das-gupta.

DR. BIPLAB DASGUPTA: Everyone is gossiping. *{Interruption).* We have such an important discussion here. What I am saying is this. I will repeat what I said just now. There is a reference to some Conventions in the title, but not in the text. For example, 'Geneva Convention Awards'. It is there in the title, but not mentioned in the text. Similarly 'New York conventions' is mentioned in the title, but nothing appears in the text. Then there is a sweeping power given to the Government, as you mentioned earlier. Clause 83 gives that power. There are rules which are there for the Government to make. This law had been hanging fire for the last six or seven months. Why did not the Government have the time? I am not talking about this particular Government. By 'Government' I mean the institution of Government. Why did not the government have the time to formulate the rules before this was brought to us?

Having said all these thing, I support the Bill, but I feel that there is one problem with the Bill, not so much with the Bill, but with the way the whole international commercial exchanges are conducted. If you look at the Bill, everything is very fair and equal. Two parties are equal. One party appoints an auditor, another party appoints an auditor. Everything on both sides is equal. But the equality is more apparent than real. In international trade what happens is this. A small Indian company is negotiating with a Goliath, a huge multinational company, an integrated concern having thousands of tentacles spread all over the world. They are negotiating with them! In this situation, even iT the rules are fair and equal, that equality does not mean much because when it comes to practice, there is no equality. Once Mahatma Gandhi said something very important talking about equality. There cannot be any equality between a giant and a dwarf. Suppose there is a boxing match. The rules are the same, three-minute rounds, one-minute break, everything else is the same; the referee is completely impartial; everybody is impartial; the only thing is, one of the boxers is Mohammed Ali and the other is Biplab Dasgupta. This is exactly what is happening....*(/*nfer-*ruptions).*

SHRI M.A BABY: You can verbally finish him.

DR. BIPLAB DASGUPTA: The point I am making is, here from this Bill, you gain an impression of apparent equality. But that does not exist actually.

If we go to arbitration the arbitration comes after the contract. You see the contract. When the contract is being made between two parties, the two parties are not equal. They are not equal in terms of resources, in terms of expertise, in terms of access to knowledge. Even then if the contract is drawn, nothing much can be done at the stage of arbitration. What I am saying is this. We are now dealing with globalization. Our companies are coming in contact with huge conglomerates, with their subsidiaries spread all over the world. In this situation, our companies before they go in for negotiation initially, even before they enter into a contract or an agreement, much before the question of arbitration comes, they should have proper

guidance from our Government. Now. there are several bodies in different parts of the world. Even the United Nations has a body which advises the multinations. In Europe also, there is a body which advises multinationals, on how to conduct business with the multinationals, how to negotiate with the multinationals and what the loopholes are. We must have a clear understanding of all those thing if we want to go in for an agreement with the multinationals. The main problem is this. When you negotiate with the multinational, they kwon everything about the subject and they only share that much of information with the other party which is to their advantage. Also, when you arc negotiating with the muhinational, then inequahties in terms of access to information and the contract which is being worked out are there. That contract does not reflect the equality between the two parties. So, there is something wrong at the contract stage, and later on, at the arbitration stage, you cannot really do much. This is the major point that I would like to bring to your notice that it is not so much the arbitration part that is very important.

More important is the contract stage where the Government should guide. Here, I would like to refer to the East Asian countries. In the East Asian countries whether it is Japan or South Korea or Taiwan or any other country, there the Government has taken a direct and positve leadership role. They are not taking the back seat. Now, under the new economic policy, the idea is that the Government should take a back seat and everything should be decided by the market, in East Asia, the Government did not take a back seat. They directed, they guided and helped the company to be launched into the international arena, to operate at the global level, to negotiate, all these things cannot be dealt with by the companies themselves. So, my suggestion to the Government is that there.should be a core cell operating somewhere in the Government. That cell should have all the information which is available with the multinationals all over the world regarding different agreements, model agreements on oil or other things which should be studied and they should be made the basis for coming into agreement with the multinationals. Once this agreement is drawn, nothing much can be gained by way of arbitration.

Lastly, I would like to make one more point. Mr. Vayalar Ravi mentioned about Enron. Satish Ji, maybe, when I mention Enron, I will be able to catch your attention.

THE VICE-CHAIRMAN.. (MISS SAROJ-KHAPARDE): Satish Ji, he is trying to catch your ears.

DR. BIPLAB DASGUPTA: lam trying to catch your ears by mentioning Enron. I am not going into the merits of Enron. This is not the business today. All that I am saying is that the dispute was whether Enron was overcharging the price or not. This was the dispute between the company and the Government. Whether the prices charges by Enron were over-priced or not and whether Enron was using unfair means to get the contract are some of the issues. One of the issues was whether the contract which was worked out was based on misinformation so that the contract could be proved to be invalid. These issues came up. So, the question was brough before the Government and the Government unilaterally cancelled the contract. The

company immediately threatened: "All right, you have cancelled the contract. We are going to arbitration because there was an arbitration clause in the agreement." Then why did the Government shy away from that? There may be political reasons. I am not going into that. Some of my friends said that there was a conspiracy. Actually, the BJP Government was always having some understanding with Enron and so on. I am not repeating that here. That may be true or may not be true. That is not the argument here. But the point is that the argument given by the Maharashtra Government at that time was that if you went to the arbitrator, the cost of arbitration would be prohibitive. Sir, the Government of Maharashtra cannot afford the cost of arbitration. It will also be cheaper for us to come to an agreement with Enron. The point I am making is this. This is not something which is reflected in this Bill itself. There is an enormous cost of arbitration and the arbitrator can allocate the cost because even if it goes to the court, the court can allocate the cost. The cost can run into millions. When you are dealing with an international body like Enron, then you have to bring in your witnesses from all over the world, you have to bring in the best lawyers from all over the world and all this will cost enormous sums of money in terms of arbitration. On this specific issue, Enron, without going into the other aspects-of Enron-I know it has been debated in this House. I do not want to go into the other aspects of it the point I am making is this. There is a huge cost involved in arbitration and the cost can be allocated to one party or the other. It is lip to the court to decide. It eventually come to the court, and for that rensoivl am saying that one should have a very clear understanding even before the agreement is made; what can be the possible cost of such arbitration.

Lastly, Madam, I want to point out that all these points have not been gone through by us so far. The reason is that the globalisation has been limited we have not been sufficiently globalised. Whether you like it or not, we are going to become more and more globalised. There will be many more agreements like this in future. So, either in the Commerce Ministry or in the Law Ministry or in both the Ministries there must be sufficiently a good number of experts who are capable of handling such issues, taking the interest of the country into account, taking the interest of the company into account and this body should advise our Indian companies that while entering into such agreements they should have an arbitration cost so that later on they do not lend themselves into a situation where such arbitration would go against them because the original contract was lost. The cost of arbitration is so prohibitive that there is no choice but to surrender to the other party. I appeal to the Members of the House-here they are dealing with an unequal relationship; there is an unequal relationship; they may be able to incorporate into the rules, but still it is a very, very unequal relationship that we must understand and appreciate all this and on that basis we should go in for this kind of international relationship. Having said this, we are supporting this Bill because some relationship is necessary, some codification is necessary as per the United Nations standing rules. I hope that the Government will take into account some of the points which we have raised on this issue. Thank you.

SHRI R. MARGABANDU (Tamil Nadu: Madam Vice-Chairperson, while welcoming this Bill it would be my bounden duty to bring forth certain things which are not so clear and unless the Bill clarifies them, it will be of no use implementing the Bill. Madam, this Bill is really welcome becuase these are the days when lots of litigations have been pending in courts for generations together, both in the trial court and the appellate couct, in the second appeal and in the Soprems court. Even fer genera-

tions together the litigations do not find the finality. So, in this way the small disputes like domestic disputes and other things can be settled by way of arbitration and conciliation. While doing so, it must be perfect. 1 am able to find from this Bill that while passing this legislation certain general laws like the Civil Procedure Code, the Limitation Act and the Evidence Act have been excluded from the operation of this Bill. These general laws must be made as basic laws for the enforcement of this Bill.

For example, I would like to mention clause 19. I would like to read clause 19.

> "19. (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872."

So, this is a very drastic Act and it will lead to a confused state of affairs.

> "(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings."

Apart from the Civil Procedure Code, if any other procedure is followed by the parties, it would lead to chaos.

> "(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this part, conduct the proceedings in the manner it considers appropriate."

Who is going to decide which is the appropriate procedure? When there is a law in the land, that is, the Civil Procedure Code, leaving it aside, if any other procedure is followed, then it will lead to confusion.

> "(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

In this case, Madam, the provisions of the Civil Procedure Code, the Evidence Act and the Limitation Act must be made applicable. Many Members have raised a point that there are no provisions regarding the minors, guardianship, etc. They have raised some [joints. If the C.P.C. is made applicable, it will cover the entire disputes and the disputes will be solved.

Then I come to the applicability of section 5 of the Limitation Act to clauses 4 and 34 (3) of the Bill. Under clause 4 it is stated that—

> "4. A party who knows that—
>
> (a) any provision of this part from which the parties may derogate, or
>
> (b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay—this is very, very vague and indefinite-or, if a time-limit is provided for stating that objection. within that period of time, shall be deemed to have waived his right to so object." Then clause 34(3) reads like this—

> "34.(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal.
>
> Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of thirty days, but not thereafter."

In this regard, Madam, I would like to say that there was a limitation prescribed under the Motor Vehicles Act. When an

accident takes place a person goes to the tribunal claiming compensation. Under the Supreme Court's guidance the time-limit was fixed at 180 days. Later it was found impracticable and it did not bring any fruitful result to the parties who were coming to the court. Then the Motor Vehicles Act was amended removing the entire limitation period. In the case of clauses 4 and 34(3) the provisions of section 5 of the Limitation Act must be made applicable.

Clause 36 is an enforcement clause. It is also not clear. Clause 36 states that— "36. Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced in the same manner as if it were a decree of the Court."

The Civil Procedure Code has been excluded from Clause 19. If the Civil Procedure Code is excluded from Clause 19, then how can Clause 36 be enforced? Section 21 of the Civil Procedure Code should be made applicable under Clause 36; otherwise, it will not serve any purpose. Take for example the Inter-State Border Dispute Act. Though the Tribunal passes an award, there is no enforcement clause. Likewise, there is no enforcement clause here. What is the use of passing an award when there is no enforcement clause? So it must be done especially when there is a clear exclusion of the CPC. So Section 21 of the Civil Procedure Code should be made applicable under Clause 36.

Then the Bill is not clear about appointment of arbitrators. The option is given to parties. If the opposite part is not willing then what will happen? There is no scope for the third power to appoint an arbitrator. The power of appointing an arbitrator must be vested with a body which is above the law and that body should appoint an arbitrator. Then only it will solve the problem. Like Lok Adalate, all other provisions and disputes must be brought within this category.

Under Clause 37 (3) there is no provision for a second appeal. Clause 37 (3) says:

> "No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

There should be a provision for a second appeal also.

One of my learned friends has rightly mentioned that Clauses 5 and 6 will not afford natural justice. I would like to read both the Clauses. Clause 5 says:

> "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this Part."

Clause 6 says:

> "In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person."

These two Clauses will not afford natural justice. So suitable amendment has to be made in this regard. As a practising lawyer in a court of law I know what the difficulties are for the enforcement of the applicability of the Acts. The three Acts, i.e. the Civil Procedure Code, the Evidence Act and the Limitation Act, must be made applicable to this Bill. Then alone it will be viable and workable and will really produce the best results. With these words, I conclude.

श्री मूलचन्द मीणा (राजस्थान): उपसभाध्यक्ष महोदया, "द आर्बिट्रेशन एंड कंसिलिएशन बिल, 1995" को लाने की आवश्यकता इसलिए हुई कि हमारे देश के अंदर मध्यस्थता पंचाट से संबंधित जो कानून थे, जो विधि थीं वह तीन अधिनियम के रूप में थी। उसके

आधार पर हम पंचाट का, यह सारा मध्यस्थता का काम चलाते थे। वह एक कानून सम्मत नहीं था। यह तीन अधिनियम थे — माध्यस्थम अधिनियम, 1940, माध्यस्थम अधिनियम, 1937 और विदेशी पंचाट अधिनियम, 1961 और इन्हीं के आधार पर हमारी सारी जो मध्यस्थता की पालिसी थी वह चलती थी। इसको एकरूप करने के लिए यह एक विधि बनाई गई है क्योंकि समय बदला है और समय की यही आवश्यकता है। हमारे देश के अंदर जो हमारी आर्थिक पालिसी है, इसकी भी एक मजबूरी है। अगर इसको सफल करना है तो हमें एक विधि-सम्मत कानून बनाना पड़ेगा। यहां पर यह बात भी चर्चा के रूप आई कि भारतीय विधि आयोग, व्यापार और उद्योग के प्रतिनिधियों, माध्यस्थम् के विशेषज्ञों सबके विचार आए कि यह तीनों जो हमारे अधिनियम हैं, इनको एकरूप बनाकर एक अधिनियम बनाया जाए, विधेयक बनाया जाए, जिससे कि निश्चित अधिकरण को अधिकार मिल सके इसके आधार पर काम चलाने के लिए। इन सारे तथ्यों को सामने रखकर, उनके दृष्टिकोण को सामने रखकर इस बिल को लाने की आवश्यकता हुई है।

महोदया, यह इसलिए भी जरूरी महसूस होता है कि इस देश के अंदर अभी कुछ दिन पहले लोक अदालत का कार्य प्रारंभ किया गया था क्योंकि हमारे न्यायालयों में बीस लाख के करीब मुकदमें लंबे समय से लंबित चले आ रहे हैं, उन पर कोई डिसीजन नहीं हो रहे थे तो यह उच्चतम न्यायालय के निर्देशानुसार एक प्रयोग किया गया था। इससे इस देश के लोगों को काफी राहत हुई है क्योंकि ऐसे मुकदमों में ऐसे झगड़ों में, जिनमें निपटारा नहीं हो रहा था, ऐसे लाखों मुकदमें लोक अदालत के माध्यम से सुलझे हैं।

महोदया, पंचायत सिस्टम हमारे देश में आज भी अनादिकाल से चला आ रहा है। इस पर बहुत विश्वास किया जाता था। आज जरूर कुछ परिवर्तन हुआ है। पहले गांव के अंदर पंच जो निर्णय करते थे, पंचायत जो कार्य करती थी, उसको लोग मानते थे, उसको नैतिक रूप से अपने आप धारण करते थे, उसका पालन करते थे, लेकिन आज लोगों में उसके पालन करने में निष्क्रियता दिखाई देती है। इसलिए भी इस कानून की आवश्यकता महसूस
हुई। इस कानून से देश के अंदर तो मध्यस्थता की बात है ही, लेकिन अंतर्राष्ट्रीय जगत में भी ऐसी आवश्यकता महसूस की गई है। जो हमारा संयुक्त राष्ट्र संघ है, उसने एक कानून के अंदर व्यापार को संबंधित रखने के लिए उस व्यापारिक कार्य से जो समझौते हैं, सुलह है उनको पूरा करने के लिए एक नियमबद्ध कानून का अपने सदस्यों के लिए कहा है। उस आधार को मानते हुए भी कानून बनाने की जरूरत पड़ी।

महोदया, मंत्री जी ने अपने वक्तव्य में कहा था कि इस कानून के बनने के बाद समय और खर्च में कमी आएगी। हम जानते हैं कि हमारे न्यायालयों द्वारा दिए जाने वाले निर्णयों में समय ज्यादा लगता है और खर्च भी ज्यादा होता है तो जब यह सुविधा मिलती है तो ऐसे कानून को क्यों नहीं बनाना चाहिए? इसलिए मैं यह मानता हूं कि सदन के प्रत्येक सदस्य इस कानून के बनने के लिए अपना समोर्ट करते हैं, लेकिन इस कानून में जो खामियां हैं उनको जरूर मंत्री जी को देखना पड़ेगा।

महोदया, कई बार बिल पास हो जाने के बाद, कानून बन जाने के बाद उसमें कई खामियां रह जाती हैं, जिनका दुरुपयोग लोग करते हैं और उसका सहारा लेकर जो मध्यस्थता का कार्य अच्छे ढंग से होना चाहिए दो पार्टियों के आपसी समझौते कराने के लिए, जो उसके पक्षकार हैं उनको न्याय दिलाने के लिए, वह कार्य नहीं हो पाता है। ऐसी कुछ खामियां जो होती हैं, उनको देखकर मंत्री जी को इस बिल में संशोधित कर इस कानून को ठीक लाना चाहिए क्योंकि कई धाराओं के अंदर ऐसी बातें सामने आई हैं और जिन का दुरुपयोग किया जा सकता है।

आज जब हम मुकदमों की बात करते हैं तो अंतर्राष्ट्रीय मुकदमे और देशी मुकदमे, देश के अंदर 20 लाख मुकदमें आज ऐसे पड़े हुए हैं जिनका कोई रास्ता नहीं है, उनकी फाइलों को दीमक लग रही है। यदि यह कानून बन जाता है तो न्यायालयों को भी सुविधा होगी क्योंकि उनके जो मुकदमे पड़े हुए हैं तो निश्चित रूप से कोर्ट में जो केस पड़े हुए हैं उनमें कमी आएगी, उनका निबटारा जल्दी होगा जिसका उदाहरण हमारी लोक अदालतें रही हैं। बहुत सारे केस ऐसे पड़े थे जिनके कि 20-20 साल से फैसले नहीं हो रहे थे, लोक अदालतों ने बड़े समझौते कराए लोगों के, बैठ-बैठकर समझौते हुए, किसी प्रकार का कोई झगड़ा नहीं। लेकिन इसके अंदर जो धारा 37 है, मैं उसको, मैडम, पढ़कर बताना चाहता हूं कि अपील का आदेश है, इसमें यह स्पष्ट नहीं किया गया कि पंचायत के माध्यम से जो भी फैसले होंगे, जब पंचायत ही फैसला करती है, मध्यस्थ ही बैठकर फैसले करते हैं तो उसमें अपील की कहीं गुंजाइश रहती है? फैसला वही माना जाता है कि जब पंचायत के जो सदस्य होंगे, दोनों पक्षों की सहमति से

बनाए जाएंगे, तो अपील करने की कहां गुंजाइश रहती है? क्योंकि जब दोनों की सहमति से होंगे तो ऐसा कोई फैसला नहीं होगा जो दोनों पक्ष नहीं मानते हों और यह भी निश्चित नहीं किया गया कि कितने पंचायत के सदस्य होंगे, जो मध्यस्थता बनेगी उसके कितने सदस्य होंगे, यह भी स्पष्ट करना चाहिए। एक या दो से ज्यादा नहीं हों।

एक माननीय सदस्य: वह है।

श्री मूलचन्द मीणा: निश्चित नहीं है, तीन-चार कितने भी बना सकते हैं, निश्चितता नहीं की है। मैं यह चाहता हूं कि इसमें यह निश्चितता की जाए, उनका भी एक फिक्स नम्बर हो। मैं धारा 37 की उपधारा (3) की बात कर रहा था; "इस धारा के अधीन अपील में पारित किसी भी आदेश से द्वितीय अपील नहीं होगी, किन्तु इस धारा की कोई भी बात उच्चतम न्यायालय में अपील करने के किसी अधिकार पर प्रभाव न डालेगी या उसे छीन न लेगी।" उच्चतम न्यायालय में अपील करने की जो छूट दी है, तो मतलब ही क्या रह जाता है पंचायत का? आज भी समझौते होते हैं, गांवों के अंदर समझौते होते हैं, कई झगड़ों के भी समझौते होते हैं, कई व्यापार से संबंधित समझौते होते हैं गांव में, उसमें जो निर्णय लिए जाते हैं, वे माने जाते हैं। समय बदला है, समय की आवश्यकता ऐसी हुई है कि लोगों के दिलों के अंदर बेईमानी पैदा हुई है क्योंकि पंचायत की बात तो आज लोग मानने नहीं लगे, इसलिए कानून बनाने की जरूरत पड़ी। लेकिन यह कानून अंतर्राष्ट्रीय जो संयुक्त राष्ट्र संघ है, उसके अनुसार जो समझौते और व्यापार संबंध होते हैं, उनके झगड़ों को निपटाने के लिए भी, एकरूपता लाने के लिए, उनके आधार पर भी बनाया गया है। मैं यह मानता हूं कि जो यह बिल मंत्री जी लाए हैं, इसमें आपने इस देश के अंदर जो तीनों पुराने अधिनियम थे उनका सार, अंतर्राष्ट्रीय कानून का सार, सबको लेकर, आपने इसको एकरूपता देने के लिए बनाया है। यह अच्छा कानून है, इससे लोगों की सहायता मिलेगी, झगड़े-फसादों का निबटारा शीघ्र होगा। तो इस कानून के लिए सारा सदन सपोर्ट तो करता ही है लेकिन मैं यह भी कहना चाहूंगा कि अंतर्राष्ट्रीय विवादों को निबटाने के साथ-साथ आजकल कई विदेशी व्यापारिक कम्पनियां हिन्दुस्तान में आ रही हैं, कई तरह के समझौते उन कम्पनियों से हो रहे हैं। महाराष्ट्र के अंदर तो कहानी अलग है कि जो गवर्नमेंट आए वह दूसरे फैसले करे और समझौते करे। पहले गवर्नमेंट किसी की थी उसने कोई समझौता किया, उसके बाद दूसरी गवर्नमेंट ने कुछ समझौते कर लिए। तो यह रोज बदलने की जो कहानी है, जो प्रवृत्ति है, इससे बाहर से आने वाली कम्पनियां, जो इस देश के अंदर डेवलपमेंट करना चाहती हैं, डेवलपमेंट में भाग लेना चाहती हैं, वह भी अपने आपको दूर करना चाहती हैं।

5.00 PAMA

इससे निश्चित तौर पर उन लोगों को सुविधा मिलेगी कि वे यहां पर आएं और इस देश के विकास में सहयोग कर सकें। उनको यह सुविधा मिलेगी, यह कानून बनने के बाद।

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Meena, could you yield for a minute?

मीणा जी, जरा एक मिनट आप बैठिए, मैं कुछ कहना चाहती हूं। I would like to take up clarifications on the statement made by the Home Minister yesterday on the mishap at Ujjain and Hardwar because Mr. Ramakant D. Khalap is busy in the other House. After clarifications, we shall resume the debate on the Bill.

मीणा जी, आप अपना भाषण कंटीन्यू कर लीजिए थोड़ी देर के बाद। पहले हम क्लैरिफिकेशन ले लेते हैं। तब तक आपको और मौका मिल जाएगा।

श्री मूलचन्द मीणा: ठीक है, जैसा आपका आदेश हो।

SHRI K.R. MALKANI: Let us stick to the schedule.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): As I told you, Mr. Ramakant, the Minister concerned, is busy in the other House. Till he comes, can we not take up clarifications on the statement because there is only one more speaker to speak on the Bill?

SOME HON. MEMBERS: Yes, Madam.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Even in the List of Business, clarifications on the statement was listed to be taken up at 5.00 p.m. If the House agrees, I will take up the clarifications.